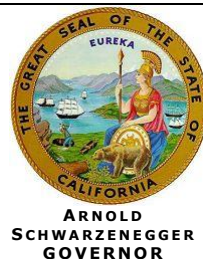




STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



For Meeting Date: May 14, 2009

Agenda Item No. 9: Consideration for Conduct of a Vested Rights Determination for the Big Cut Mine (CA Mine ID #91-09-00XX), Diane Anderson (Agent), Richard Churches (Operator), El Dorado County.

BACKGROUND: The State Mining and Geology Board (SMGB) serves as a Lead Agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in El Dorado County. The SMGB, when acting as the lead agency pursuant to SMARA, has the responsibility to conduct the public hearing and make a vested right determination upon request from the operator. Administrative procedures for conducting a vested right determination when the SMGB serves as a lead agency were enacted on September 13, 2008, and contained in Title 14 California Code of Regulations (CCR) Division 2, Chapter 8, Subchapter 1, Article 15, Sections 3950 to 3965. The SMGB is considering who will serve as the hearing officer during conduct of a public hearing for a vested right determination in the matter of the proposed Big Cut Mine located in El Dorado County.

REGULATORY AUTHORITY AND CONSIDERATIONS: As part of the administrative procedure for conduct of a vested rights determination when the SMGB serves as a lead agency pursuant to SMARA, certain considerations need to be made by the SMGB upon receipt of a request by the claimant. Article 15 California Code of Regulations (CCR) Section 3957 provides considerations for selection of the hearing officer, and states:

"The Board may delegate conduct of a vested rights public hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Board may also delegate conduct of a vested rights public hearing to an administrative hearing officer or special master.

As soon as practicable after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952, and in no event more than 45 business days from such conclusion, the Board, or a designee of the Board shall decide whether a vested rights public hearing will be conducted by the Board, a committee of the Board, an administrative hearing officer selected by the Board, or a special master selected by the Board."

BACKGROUND: The Agent for the Big Cut Mine, located in El Dorado County, filed a vested right Request for Determination on March 13, 2009. The filing included an Administrative Record, affidavit, and processing fee. Pursuant to the SMGB's regulations, Article 15 CCR Section 3954, a determination of jurisdiction was considered by the Chairman. A determination



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that the request was within the jurisdiction of the SMGB was made by the Chairman on April 3, 2009. A mailing of the Notice of Pending Determination, pursuant to Article 15 CCR Section 3955, is anticipated to be published by May 15, 2009. An estimated cost for determination of findings, costs anticipated to be incurred for the SMGB's legal counsel, and expenses anticipated to be incurred by the SMGB, were provided to the claimant's representative on May 5, 2009. Review of the Administrative Record will be performed by the SMGB's Executive Officer. The Executive Officer plans to commence review of the Administrative Record, and make a determination of findings upon receipt of funds from the claimant.

OPTIONS FOR THE SMGB'S CONSIDERATION: Several options are available to the SMGB when serving as a lead agency pursuant to SMARA and when conducting a vested rights determination. The SMGB can decide to have the public hearing conducted by the SMGB, at least two members of the SMGB as appointed by the Chairman, an administrative hearing officer selected by the SMGB, or a special master selected by the SMGB.

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer recommends that the SMGB decide to serve as the hearing officer when conducting a vested rights public hearing when serving as the lead agency pursuant to SMARA.

SUGGESTED MOTION LANGUAGE: The Executive Officer offers the following motion for the SMGB's consideration:

Motion for the SMGB to serve as hearing officer:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board serve as the hearing officer when conducting the public hearing for a vested rights determination for the proposed Big Cut Mine surface mining operation located in El Dorado County.

Respectfully submitted:

Stephen M. Testa
Executive Officer